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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,627	12/29/2000	Joseph F. Khouri	062891.0471	2064
7590	12/22/2004		EXAMINER	
BAKER BOTTS L.L.P. 2001 Ross Avenue Dallas, TX 75201-2980			WILLETT, STEPHAN F	
			ART UNIT	PAPER NUMBER
			2141	

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/751,627	KHOURI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Stephan F Willett	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 October 2004.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-68 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-68 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/9/04.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC □ 102***

1. The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 1, 14-15, 24, 35, 44, 51, 58 are rejected under 35 U.S.C. 102(e) as being anticipated by Katseff II et al. with Patent Number 6,301,258.

3. Regarding claim(s) 1, 14-15, 24, 35, 44, 51, 58, Katseff II teaches a communication network operable to receive streaming or real time media at a first delivery rate, col. 4, lines 48-52. Katseff II teaches a memory or buffer coupled to the network to store media received, col. 4, lines 45-48. Katseff teaches a media rate controller coupled to memory and the network operable to adjust, change and command the first delivery rate as “delays”, col. 4, lines 38-42. Katseff II teaches a digital signal processor as A/D converter, col. 3, lines 14-16 and coder/decoder to convert to audible for a speaker as D/A converter, col. 5, lines 3-5. Katseff II teaches an output device coupled to memory and an interface to transform signals appropriately, col. 5, lines 53-55, and the “telephony application implements the functionality needed to prepare the data [includes files, subfiles, packets, etc.] for transmission over a packet network”, col. 3, lines 33-34. Katseff II teaches the determined rate is determined at the endpoint device as “buffer manager” and “telephony application”, col. 4, lines 45-46.

***Claim Rejections - 35 USC □ 103***

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103□ and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 67-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katseff II et al. with Patent Number 6,301,258 view of Katseff I et al. with Patent Number 5,822,537.

7. Regarding claim(s) 67-68, Katseff II teaches a communication network operable to receive streaming or real time media at a first delivery rate, col. 4, lines 48-52. Katseff II teaches a memory or buffer coupled to the network to store media received, col. 4, lines 45-48. Katseff teaches a media rate controller coupled to memory and the network operable to adjust, change and command the first delivery rate as “delays”, col. 4, lines 38-42. Katseff II teaches a digital signal processor as A/D converter, col. 3, lines 14-16 and coder/ decoder to convert to audible

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for a speaker as D/A converter, col. 5, lines 3-5. Katseff II teaches an output device coupled to memory and an interface to transform signals appropriately, col. 5, lines 53-55, and the “telephony application implements the functionality needed to prepare the data [includes files, subfiles, packets, etc.] for transmission over a packet network”, col. 3, lines 33-34. Katseff II teaches the determined rate is determined at the endpoint device as “buffer manager” and “telephony application”, col. 4, lines 45-46. Katseff II teaches the invention in the above claim(s) except for explicitly teaching a network device that is remote. In that Katseff II operates to buffer and communicate data in a computer network, the artisan would have looked to the network communication loading arts for details of implementing network loading. In that art, Katseff I, a related network communication system, teaches “compensates for congestion on [the] network”, col. 15, lines 3-4 in order to provide data transmission control. Katseff I specifically teaches a remote server, as one among numerous network devices, col. 15, lines 4-6. Further, Katseff I suggests “a data buffer monitoring subroutine”, col. 15, line 17 will result from implementing the adjustments. Thus, it would have been obvious to one of ordinary skill in the art to incorporate remote devices as taught in Katseff I into the communication system described in Katseff II because Katseff II operates with various network configurations and Katseff I suggests that optimization can be obtained by specifically adjusting remote rates. Therefore, by the above rational, the above claims are rejected.

8. Claims 2-13, 16-23, 25-34, 36-43, 45-50, 52-57, 59-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katseff II et al. with Patent Number 6,301,258 view of Aybay with Patent Number 6,185,221.

9. Regarding claim(s) 2, 4, 17, 27, 37, 45, 64, Katseff II teaches a communication network

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operable to receive streaming or real time media at a first delivery rate, col. 4, lines 48-52.

Katseff II teaches a memory or buffer coupled to the network to store media received, col. 4,

lines 45-48. Katseff teaches a media rate controller coupled to memory and the network

operable to adjust, change and command the first delivery rate as “delays”, col. 4, lines 38-42.

Katseff II teaches a digital signal processor as A/D converter, col. 3, lines 14-16 and coder/decoder to convert to audible for a speaker as D/A converter, col. 5, lines 3-5. Katseff II teaches an output device coupled to memory and an interface to transform signals appropriately, col. 5, lines 53-55, and the “telephony application implements the functionality needed to prepare the data [includes files, subfiles, packets, etc.] for transmission over a packet network”, col. 3, lines 33-34. Katseff II teaches the determined rate is determined at the endpoint device as “buffer manager” and “telephony application”, col. 4, lines 45-46. Katseff II teaches the invention in the above claim(s) except for explicitly teaching a network interface as Ethernet or commands to reserve an amount of bandwidth. In that Katseff II operates to buffer and communicate data in a computer network, the artisan would have looked to the network communication scheduling arts for details of implementing network loading. In that art, Aybay, a related network

communication system, teaches “buffering if incoming and/or outgoing packets”, col. 7, line 46 in order to provide data transmission control. Aybay specifically teaches “Ethernet”, col. 7, lines 11 and “any output channels requested by the channel will be reserved by the scheduler”, col. 14, lines 40-41 “based on the bandwidth capacity of the data link”, col. 7, lines 28 to insure a QOS. Further, Aybay suggests “network traffic control”, col. 7, line 47-48 will result from implementing the bandwidth scheduling. Thus, it would have been obvious to one of ordinary skill in the art to incorporate Ethernet bandwidth reservations as taught in Aybay into the

communication system described in Katseff II because Katseff II operates with various network communication protocols and QOS and Aybay suggests that optimization can be obtained by specifically tailoring network traffic based on reservations. Therefore, by the above rational, the above claims are rejected.

10. Regarding claim(s) 3, 16, 25, 36, 46, 52, 65, Katseff teaches voice over IP, col. 1, lines 17-18.

11. Regarding claim(s) 5, Katseff teaches the adjustment specifies a new rate as “slower than normal rate”, col. 5, lines 54-55.

12. Regarding claim(s) 6, 18, 28, 38, 48, 50, 54, 56, 66, Katseff teaches the media controller to command adjustment of the first delivery rate based on the status of the memory determination, col. 5, lines 53-54.

13. Regarding claim(s) 7, 19, 29, 39, 62, Katseff teaches the media controller increases the delivery rate when memory is below a threshold, col. 5, lines 53-55.

14. Regarding claim(s) 8, 20, 30, 40, 49, 55, Katseff teaches the media controller decreases the delivery rate when memory is above a threshold, col. 6, lines 7-12; col. 7, lines 8-10.

15. Regarding claim(s) 9, 21, 31, 41, Katseff teaches an output device coupled to memory and an interface to transform signals appropriately, col. 5, lines 53-55.

16. Regarding claim 10-11, 23, 33, 43, the Katseff and Aybay patents disclose the method of the preceding claims. The Katseff and Aybay patents do not explicitly disclose legacy user controlled commands via an input device such as a GUI to adjust that rate at which media is being output. However, Official Notice is taken MPEP 2144.03 (a)) that user controlled commands via an input device to adjust that rate at which media is being output. It would have

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been obvious to one of ordinary skill in the art at the time of the application's invention to enable a user to specify the delivery rates to obtain the advantages of communicating as specifically desired by the client. Such as Hejna, Jr. with Patent Number 6,374,225 teaches an input device such as a GUI or voice and a user to specify the delivery rates, col. 1, lines 54-60. By the above rational, the claim is rejected.

17. Regarding claim(s) 12, 22, 26, 32, 42, 47, 53, 59, Katseff teaches an output device coupled to memory and an interface to transform signals appropriately such as a speaker for audible sounds, col. 4, line 39.

18. Regarding claim(s) 13, Katseff teaches the media controller to determine whether the first delivery rate may be adjusted wherein the rate should not be adjusted if the output will be not "intelligible", col. 5, lines 66-67, thus operation should be at the first or "normal" delivery rate, col. 5, lines 30-33.

19. Regarding claim(s) 34, Katseff teaches the logic is embedded in software as a "program", col. 3, lines 31-32.

20. Regarding claim(s) 57, 61, 63, Katseff teaches the determined rate is determined at the endpoint device as "buffer manager" and "telephony application", col. 4, lines 45-46.

21. Regarding claim(s) 60, Katseff teaches output device as a telephone col. 1, lines 21-24.

*Response to Amendment*

1. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected. Based on this broad language, typically numerous of the components would read on the broad language, however, clarity has been provided. The

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applicant's assumptions are correct with regard to each element's correlation, however, such a limited interpretation of these terms is not reasonable and is not mutually exclusive.

2. The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

3. Applicant suggests "the PC-based phone ... adjusts ... the first delivery rate of itself (not of a network device)", Paper No. 5, Page 14, line 26. First, the phone is a network device, thus a network device is adjusting the rate. For example, "data is played out [delivery rate] of telephony input buffer", col. 4, lines 47-48 in Katseff II, but the rate at which data is delivered from CODEC 120 to the next element in the PC in either direction have delivery rates, as is true with each element the data is passed. Also, there are numerous network devices that the command is passed until it is eventually acted on by each endpoint device. Many of the intermediary devices could be considered endpoint devices, in a client/server network depending on the device's role, and each of these devices are commanded to adjust the rate and/or they adjust the rate themselves. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

4. Applicant suggests "the PC-based phone ... changes ... the output rate from the buffer (not the delivery rate)", Paper No. 5, Page 15, line 27. Again, as explained above, depending on which device, as in the NIC, the rate could be output or input. Thus, the output rate from buffer is a delivery rate to the next element in the device or network In any event, in such a client/server environment the roles of client or server change all the time and obviously the role can be interchanged. The references should not be read in a vacuum, the teachings are not mutually exclusive, and must be taken in context of what was reasonable based on the subject

matter as a whole as would have been understood at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. The descriptions in the references are not obfuscated by the numerous other suggested usages of said description in the reference. In addition, implicitly, impliedly and inferentially, various interchangeable roles are taught and language identical or verbatim is not required in an obvious rejection. Note that reasonable “inferences”, and “common sense” may be considered in formulating rejections for obviousness. Specifically, *In re Preda*, 401 F.2d 825, 159 USPQ 342, 344 (CCPA 1968) states “in considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” Also, *In re Bozek*, 416 F.2d 738, 163 USPQ 545, 549 (CCPA 1969) states that obviousness may be concluded from “common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference”. Additionally, see *In re Gauerke*, 24 CCPA 725, 86 F.2d 330, 31 USPQ 330, 333 (CCPA 1936), and *In re Libby*, 45 CCPA 944, 255 F.2d 412, 118 USPQ 94, 96 (CCPA 1958), and *In re Jacoby*, 309 F.2d 738, 125 USPQ 317, 319 (CCPA 1962), and *In re Wiggins*, 488 F.2d 538, 543, 1979 USPQ 421, 424 (CCPA 1973). Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

5. Applicant suggests “not the input buffer should be receiving the command to change the delivery rate”, Paper No. 5, Page 16, lines 24-25. Both the telephony application [sic] and input buffer receive the “command”. Also, a computer network uses a continuous feedback loop of measured data to communicate that consist of generating thousands of commands. The reference does not state specifically “generate a command”. However, the requisite command is clearly

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described in the reference. For example, Katseff states “the elements are set [commanded] to play out at a slower than normal rate”, col. 5, line 54-55. Throughout the reference the rate is controlled or set or commanded as is understood by a person having ordinary skill in the art. The rate must be set or commanded to a desired level, otherwise who or how would the rate be changed? The rates that media may be streamed are described as “a 90% play rate is barely noticeable … other rates may, similarly, prove acceptable”, col. 6, lines 1-2, or even a rate of zero as described by “the transmission of audio data packets … is temporarily halted”, col. 5 lines 21-22 and “the rate at which media data elements are played out of buffer is set … to a rate faster than the normal rate”, col. 6, lines 48-50. These rates are determined based on “the number of elements in buffer 129”, col. 5, line 53. In Figure 1, buffer manager 150 is connected via network layer 130 to a modem 140 which is clearly a network interface. Buffer manager 150 controls output to buffer 129, but also to telephony application 127 in accord with setting a rate of play as stated in step 203 which results in controlling that rate of play at endpoint devices 160, 170 since 100, 105 are actually input devices. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

6. Applicant suggests Katseff does not “retrieve the media from the file and form it into packets”, Paper No. 5, Page 18, lines 15-16. First, recognize this a packet telephony and Katseff teaches “telephony application implements the functionality needed to prepare the data [includes files, subfiles, packets, etc.] for transmission over a packet network”, col. 3, lines 33-34. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

7. Applicant requested a reference to support the official notice, Paper No. 5, Page 20. First, Applicant suggests “the first delivery rate of itself (not of a network device)”, Paper No. 5,

Page 14, line 26, thus arguably “itself” would also include “a user to specify the delivery rates”, Paper No. 5, Page 20, line 21. However, Hejna, Jr. with US Patent Number 6,374,225 teaches an input device such as a GUI or voice and a user to specify the delivery rates as “listener”, col. 1, lines 54-60. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

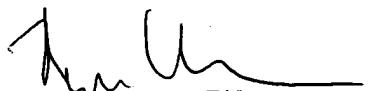
*Conclusion*

22. Prior art made of record and not relied upon is considered pertinent to applicant's disclosure is disclosed in the Notice of References Cited. A close review of the Hunt et al. with Patent Number 5,764,235 and Katseff et al. with Patent Number 5,822,537 and Chen et al. with Patent Number 6,665,751 is suggested. The other references cited teach numerous other ways to modify buffer size and transmission rates, thus a close review of them is suggested.
23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP □ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
8. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (571) 272-3890. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.
10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (571) 272-0044.
11. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

sfw

December 10, 2004



RUPAL DHARIA  
SUPERVISORY PATENT EXAMINER